

1 **UNITED STATES DISTRICT COURT**
2 **NORTHERN DISTRICT OF OHIO**
3 **EASTERN DIVISION**

3 **UNITED STATES OF AMERICA,**)
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Case No. 1:14-cr-438
Youngstown, Ohio
Thursday, July 2, 2015
10:15 a.m.

RYAN D. MALONE,

Defendant.

8 **TRANSCRIPT OF PROCEEDINGS**
9 **BEFORE THE HONORABLE BENITA Y. PEARSON**
10 **UNITED STATES DISTRICT JUDGE**

11 **SENTENCING**

12 **APPEARANCES:**

13 **For the Government:**

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Proceedings recorded by mechanical stenography;
transcript produced by computer-aided transcription.

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P R O C E E D I N G S

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THE CLERK: The matter before the court is Case
Number 1:14-cr-438, the United States of America versus Ryan
D. Malone.

THE COURT: Good morning, everyone. You may all
retake your seats.

ALL: Good morning.

THE COURT: Counsel for the United States, will
you please introduce yourself for the record and the person
seated with you at counsel's table?

MS. KLUMP: Good morning, Your Honor. Kendra
Klump for the United States. Along with me at table is
Special Agent Paul Cruz of the FBI.

THE COURT: Welcome to you both.

MS. KLUMP: Thank you.

THE COURT: Counsel for Mr. Malone, will you
please introduce yourself for the record, along with your
client?

MR. THOMPSON: Good morning, Your Honor. Darin
Thompson from the Federal Public Defender Office, and to my
left is Ryan Malone.

THE COURT: Welcome to you both.

I am pleased that our representative from the
Office of Pretrial Services and Probation is here with us

1 today. Sir, will you please introduce yourself for the
2 record?

3 PROBATION OFFICER: Good morning, Your Honor.
4 Jordan Wlotzko with United States Probation.

10:16:21 5 THE COURT: Welcome, Mr. Wlotzko, and thank you
6 for not only being here, but for the work you've done in
7 helping us all to prepare for today's sentencing hearing.

8 Mr. Malone, this hearing has been scheduled to
9 allow me to impose sentence upon you. And this sentencing
10:16:36 10 follows the indictment brought against you charging you with
11 being a felon in possession of firearm and ammunition, your
12 plea of guilty to that count, and that plea of guilty was
13 taken by a magistrate judge and accepted by me.

14 I have reviewed, of course, the transcript of that
10:16:53 15 hearing. In addition to that, I've also reviewed the
16 sentencing memorandum that was filed on your behalf by your
17 counsel, Mr. Thompson.

18 Mr. Thompson, this morning I was given a copy of
19 sentencing -- a supplement to the sentencing memorandum.
10:17:12 20 And I note that it contains several letters written to the
21 court in support of Mr. Malone. So I also have that.

22 The presentence investigation report that regards
23 Mr. Malone was first disclosed in May, on the 6th of that
24 month, this year, 2015. Its final disclosure was made on
10:17:36 25 the 23rd of June, this year, 2015. I have that report.

1 I've reviewed it.

2 Let me start with you, Ms. Klump. Is there
3 anything that I haven't listed that you believe I should
4 have listed to assure you that I am prepared to go forward
10:17:50 5 today?

6 MS. KLUMP: No, Your Honor.

7 THE COURT: Thank you.

8 Mr. Thompson, anything you can think of, sir?

9 MR. THOMPSON: No, Your Honor.

10:17:56 10 THE COURT: Ms. Klump, let me start again with
11 you. The final presentence report that I've identified, the
12 one issued on the 23rd of June, this year, when you look at
13 page 21 of that report, it tells me there are no objections
14 filed on behalf of the government.

10:18:13 15 Is that true?

16 MS. KLUMP: Yes, Your Honor.

17 THE COURT: Have you had enough time to review
18 fully this report?

19 MS. KLUMP: Yes, I have, Your Honor.

10:18:19 20 THE COURT: Thank you.

21 Mr. Thompson, on that same page, that's page 21,
22 it tells me that there is one unresolved objection. Is that
23 all that you have that's unresolved regarding this
24 presentence report?

10:18:34 25 MR. THOMPSON: Actually, Your Honor, that is no

1 longer unresolved. In the sentencing memo, I believe I
2 indicated that we are withdrawing that objection.

3 THE COURT: I note the objection on the addendum
4 at page 21 is withdrawn. Thank you, Mr. Thompson.

10:18:55 5 MR. THOMPSON: Thank you, Your Honor.

6 THE COURT: And otherwise, sir, you've had enough
7 time to fully review the presentence report?

8 MR. THOMPSON: Yes, Your Honor.

9 THE COURT: Along with Mr. Malone?

10:19:07 10 MR. THOMPSON: Yes.

11 THE COURT: Then, Counsel, this is the way I'll
12 proceed. And, Mr. Malone, it is important to me that you
13 understand this as well.

14 The first part of this hearing is going to be
10:19:17 15 reviewing with counsel the presentence report and assuring
16 myself that I've correctly calculated the advisory
17 guidelines sentencing range.

18 Once I've completed that part of the hearing, I'll
19 then move on to the part of the hearing wherein I apply not
10:19:36 20 only the law, but my discretion to develop what I believe is
21 a sufficient, not greater than necessary sentence to be
22 imposed in this case.

23 I will, of course, give consideration to the
24 statutory maximum of 120 months, the correct guidelines
10:19:54 25 range, which is advisory. And when I take into

1 consideration those things, I'll certainly also be taking
2 into consideration the 3553(a) factors, meaning those
3 factors that will help me to ultimately fashion your
4 sentence.

10:20:12 5 Not only the nature and circumstances of the
6 offense, but things regarding your history and
7 characteristics, prior record, any violence in that record,
8 physical abuse, diminished capacity, employment, age,
9 substance abuse, family ties.

10:20:27 10 Just punishment is part of what I'll be
11 considering as well, but that's not all, adequate
12 deterrence, protecting the public, and reflecting the
13 seriousness of the offense.

14 And while considering all of that, to the extent
10:20:38 15 it can be achieved, sir, I will also give serious
16 consideration to what can be done to allow you to improve
17 your conduct and condition.

18 With that, I'm ready to begin. Counsel, what I'll
19 do is direct your attention to certain parts of the
10:20:57 20 presentence report. I won't specifically ask about every
21 paragraph, Mr. Malone, of this many-paragraph report. So if
22 there is any part that I don't volunteer to address, just
23 ask and we'll address that part together on the record.

24 The first place where I'd like to direct your
10:21:20 25 attention is on page 4, under the subtopic heading

1 "Adjustment for Acceptance of Responsibility," paragraph 10.

2 Mr. Malone, this is what paragraph 10 says: "The
3 defendant provided the following statement through defense
4 counsel wherein he admitted involvement in the offense."

10:21:42 5 And this is in quotes, Mr. Malone. After I read
6 it, I am going to ask you two questions. The first will be
7 if that's indeed your statement provided through counsel to
8 the probation office. The next is if I read it correctly.

9 "On November 4th, 2014, I possessed the firearm
10:22:02 10 described in the indictment after having been convicted of a
11 felony. I deeply regret my conduct and ask the court for
12 lenience."

13 Sir, is that indeed your statement?

14 THE DEFENDANT: Yes, Your Honor.

10:22:12 15 THE COURT: Did I read it correctly?

16 THE DEFENDANT: Yes.

17 THE COURT: On that same page, this time under the
18 subtitle "Offense Level Computation," starting with
19 paragraph 11, it identifies that this report has been
10:22:30 20 compiled using the 2014 Guidelines Manual.

21 Any objection to paragraph 11, Ms. Klump?

22 MS. KLUMP: No, Your Honor.

23 THE COURT: Mr. Thompson?

24 MR. THOMPSON: No, Your Honor.

10:22:47 25 THE COURT: Now we move on to the calculation for

1 Count 1 of the indictment, and it's the sole count brought
2 against Mr. Malone, and that is being a felon in possession
3 of firearm and ammunition.

4 Paragraph 12 suggests a base offense level of 24.
10:23:06 5 In paragraph 12, it's explained why the base offense level
6 of 24 is applicable, and that's pursuant to Section 2K2.1 of
7 the Guidelines Manual.

8 Any objection to paragraph 12, its explanation,
9 Ms. Klump --

10:23:24 10 MS. KLUMP: No, Your Honor.

11 THE COURT: -- or the ultimate suggestion of 24?

12 MS. KLUMP: No, Your Honor.

13 THE COURT: Mr. Thompson?

14 MR. THOMPSON: No, Your Honor.

10:23:31 15 THE COURT: So then moving on to paragraph 13.

16 This is the first place where an adjustment upwards is
17 suggested. And this suggests an adjustment upwards of two
18 levels because the firearm possessed by Mr. Malone was
19 stolen or had an altered or obliterated serial number. In
10:23:53 20 this case, the firearm was stolen. And therefore, pursuant
21 to the sentencing guidelines -- and, Mr. Wlotzko -- I am
22 pronouncing that poorly, aren't I?

23 PROBATION OFFICER: "Wlotzko."

24 THE COURT: "Wlotzko."

10:24:09 25 -- it doesn't state in paragraph 13 the section on

1 which you rely. You say (b) (4), but that's also Section
2 2K2, isn't it?

3 PROBATION OFFICER: Yes, Your Honor.

4 THE COURT: And I'd like it to identify that. You
10:24:20 5 and I, and I think those with us in the courtroom know it,
6 but for those who are less familiar, it would be better if
7 we put the full citation to the section there.

8 PROBATION OFFICER: Okay, Your Honor.

9 THE COURT: Thank you.

10:24:33 10 Apart from that addition, Ms. Klump, any objection
11 or any other addition that you'd suggest to paragraph 13?

12 MS. KLUMP: No, Your Honor.

13 THE COURT: How about you, Mr. Thompson?

14 MR. THOMPSON: No, Your Honor.

10:24:42 15 THE COURT: Thank you.

16 Now we're moving on to paragraph 14. And the same
17 adjustment would be appropriate there, don't you agree?

18 PROBATION OFFICER: Yes, Your Honor.

19 THE COURT: Now, understanding that that
10:24:53 20 adjustment will be made, and that Mr. Malone's objection to
21 the increase of four levels, which was addressed on page 21
22 in the addendum, as I've spoken to earlier -- tell me,
23 Ms. Klump, does the United States have an objection to the
24 increase by four levels specified in paragraph 4, because
10:25:20 25 the firearm was used in connection with any other felony

1 offense?

2 MS. KLUMP: No objection, Your Honor.

3 THE COURT: Mr. Thompson?

4 MR. THOMPSON: No objection, Your Honor.

10:25:28 5 THE COURT: Counsel, let's double-check the math
6 here. I have, and I believe that when 24 is increased by
7 two, it becomes 26. When it's further increased by four, it
8 does indeed become 30, as suggested at paragraph 18. And I
9 have no problems with the zero suggested at paragraphs 15,
10:25:51 10 16 and 17.

11 Ms. Klump, any objections to the zeros suggested
12 at 15, 16 and 17?

13 MS. KLUMP: No, Your Honor.

14 THE COURT: Are you in agreement with the math
10:26:01 15 suggested at paragraph 18, that Mr. Malone's adjusted
16 offense level is a 30 before further adjustment?

17 MS. KLUMP: Yes, Your Honor.

18 THE COURT: Mr. Thompson, can you tell me, do you
19 object to there being no victim-related adjustment, no
10:26:16 20 role-related adjustments, no obstruction adjustment?

21 MR. THOMPSON: No objection, Your Honor.

22 THE COURT: And do you agree also with the math at
23 paragraph 18, sir?

24 MR. THOMPSON: Yes.

10:26:25 25 THE COURT: It's 30, isn't it?

1 MR. THOMPSON: Yes, Your Honor.

2 THE COURT: Okay. So now, and I will remark that
3 I found no bases in the record for Chapter 4 enhancements.

4 Have you, Ms. Klump?

10:26:36 5 MS. KLUMP: No, Your Honor.

6 THE COURT: Mr. Thompson?

7 MR. THOMPSON: No, Your Honor.

8 THE COURT: So the zero there is correct.

9 Now we're to the acceptance of responsibility
10:26:44 10 paragraphs. There are two of them, paragraphs 20 and 21.

11 While I'm not required to hear the government
12 regarding paragraph 20, Ms. Klump, I'd like to hear you
13 regarding that paragraph. As importantly, I'd certainly
14 like to hear you regarding paragraph 21, the suggestion that
10:27:05 15 Mr. Malone be granted a third level downwards pursuant to
16 3E1.1, subpart (b).

17 Would you care to be heard?

18 MS. KLUMP: Yes, Your Honor. Thank you.

19 The government would move for the third point
10:27:15 20 reduction for acceptance of responsibility under that
21 subsection. Mr. Malone did accept responsibility, and also
22 did so in a timely fashion, enabling the government to save
23 resources and avoiding preparation for trial.

24 THE COURT: Thank you.

10:27:31 25 Mr. Thompson, I won't ask for a response and I

1 won't keep you in suspense. I find that -- first of all, I
2 will grant the government's motion regarding 3E1.1, Section
3 (b), and I also find that Mr. Malone is worthy of the two
4 levels downward suggested by Section 3E1.1, subpart (a).

10:27:50 5 Therefore, Mr. Malone, I adopt the suggestions at
6 paragraphs 20 and 21 and reduce the 30 by three levels, and
7 believe that paragraph 22 is correct, Mr. Thompson, when it
8 suggests a total offense level of 27.

9 Any objection to that, sir?

10:28:08 10 MR. THOMPSON: No objection, Your Honor.

11 THE COURT: Ms. Klump?

12 MS. KLUMP: No, Your Honor.

13 THE COURT: I think we've correctly calculated the
14 advisory guidelines offense level. Now let's move on to
10:28:19 15 criminal history. We'll work towards the correct
16 calculation of the score, and then ultimately the category.

17 Regrettably, this is a long section, Mr. Malone.
18 It starts at the bottom of page 5, spills over onto a full
19 page 6, a full page 7, a full page 8, a full page 9, a full
10:28:44 20 page 10, a full page 11. Midway on page 12, although the
21 criminal history doesn't end there, but because what follows
22 regards other criminal conduct that is not scored, we can
23 stop at the middle of page 12. And I ask you to focus on
24 paragraphs 34, 35 and 36.

10:29:09 25 Starting at 34, we're told that the criminal

1 convictions result in a total criminal history score of 11.

2 Paragraph 35 tells us that because Mr. Malone was
3 under supervision by the Adult Parole Authority, two points
4 are added. And that's pursuant to Section 4A1.1, subpart
10:29:31 5 (d).

6 And, Mr. Wlotzko, I think that's a reference back
7 to paragraph 32, isn't it, the Parole Authority supervision,
8 because that at 33 had terminated?

9 PROBATION OFFICER: That is correct, Your Honor.

10:29:53 10 THE COURT: Okay. Thank you, sir.

11 Lastly, paragraph 36 combines the additional two
12 levels with the 11 points at 34, resulting in a total score
13 of 13, placing Mr. Malone in a criminal history category of
14 VI.

10:30:15 15 Ms. Klump, any corrections or objections to
16 paragraphs 34, 35 or 36?

17 MS. KLUMP: No, Your Honor.

18 THE COURT: Mr. Thompson?

19 MR. THOMPSON: No, Your Honor.

10:30:23 20 THE COURT: I don't think it necessary to review
21 that which follows at the bottom half of page 12, 13 or 14,
22 but again, if anyone would like me to, I will. Absent that,
23 I think we now have the correct criminal history category,
24 and that is a VI.

10:30:47 25 The intersection of an offense level 27 with a

1 category of VI, Mr. Malone, suggests a low end range of
2 incarceration of 130 months, the high end of 162 months.
3 The maximum term of incarceration that the law allows to be
4 imposed for the offense to which you've pled guilty is only
10:31:13 5 ten years; therefore, I must cap the range at ten years. So
6 in place of the low end of 120, I use just a single number,
7 and that is 120.

8 Any disagreement with that, Mr. Thompson?

9 MR. THOMPSON: No, Your Honor.

10:31:29 10 THE COURT: Ms. Klump?

11 MS. KLUMP: No, Your Honor.

12 THE COURT: Counsel, with that I think we're ready
13 to move on to the second phase of sentencing, and that being
14 the phase wherein I hear from counsel, of course,
10:31:42 15 incorporating not only the allocutions of counsel, but the
16 sentencing memorandum filed on behalf of Mr. Malone, and
17 also the letters that were filed as a supplement to that
18 sentencing memorandum.

19 Is there anything more, Ms. Klump, before I hear
10:31:58 20 your allocution?

21 MS. KLUMP: No, Your Honor. Thank you.

22 THE COURT: Mr. Thompson, how about you before the
23 allocutions start, anything more?

24 MR. THOMPSON: No, Your Honor. Thank you.

10:32:04 25 THE COURT: Certainly.

1 Mr. Malone, after I've heard both counsel
2 allocute, I will hear from you. Should you choose to speak
3 to the court, I will hear you before I sentence you.
4 Understand?

10:32:20 5 THE DEFENDANT: Yes.

6 THE COURT: Ms. Klump, I'm ready when you are.

7 MS. KLUMP: Thank you, Your Honor.

8 The government would request that the court impose
9 a statutory maximum in this case. The government feels that
10:32:28 10 a sentence of 120 months would be sufficient, but not
11 greater than necessary, to achieve the goals of 3553(a).

12 The government recognizes that asking for the
13 statutory max is unusual, but does feel that it is
14 appropriate in this case for several reasons.

10:32:45 15 First, as to the nature and circumstances of the
16 offense, the court is, of course, familiar with those
17 circumstances from the PSR report. But just to touch
18 briefly on some aspects of the offense conduct and relevant
19 conduct.

10:33:00 20 The government would respectfully submit this is
21 anything but a garden variety felon in possession case, Your
22 Honor. Here, not only -- well, here there are several
23 aggravating factors to an otherwise somewhat common offense,
24 unfortunately, before this court.

10:33:19 25 One, to start with, the firearm itself, of course,

1 there is the enhancement for that firearm being stolen, and
2 the dangers and risks that are associated with stolen
3 firearms in our community. But also, I think it's important
4 to note that this firearm was loaded; not just with 15
10:33:35 5 rounds in the magazine, but also with one in the chamber,
6 further amplifying the danger that was inherent with the
7 carrying of that firearm.

8 In addition, the firearm was found on Mr. Malone's
9 person. It wasn't, as it might be in other cases, found in
10:33:53 10 a nearby desk drawer or under the seat in a car, but it was
11 found on his person as he was exiting a vehicle.

12 Which transitions me to the other relevant
13 conduct, of course, looming in this case, which is the
14 four-level enhancement that Mr. Malone has received for use
10:34:12 15 of a firearm in connection with another felony offense.

16 Here, as Your Honor is aware, the other felony
17 offenses involved are very severe and very troubling ones.
18 In summary, the kidnapping of an individual victim on the
19 east side of Cleveland that was committed by Mr. Malone and
10:34:31 20 three other individuals.

21 The evidence connecting Mr. Malone to that crime,
22 not only from his failure to -- or his non-objection to the
23 enhancement, but as is evident in the report, the use of his
24 phone to make a ransom demand to the victim's family.

10:34:51 25 Also, when he was taken into custody and when he

1 had the firearm in question on his person, in addition,
2 there was a mask on his person, there was duct tape. The
3 evidence suggests that duct tape was used to bind the victim
4 in the kidnapping. And certainly the presence of a mask
10:35:11 5 further amplifies the fear that was brought about by this
6 whole conduct.

7 I won't belabor the facts underlying the
8 kidnapping, Your Honor. You have it before you in paragraph
9 6. But certainly this -- the conduct involved, not just the
10:35:30 10 abduction of a person, but binding the individual and
11 placing him in the trunk of a car, and then later the
12 backseat, demonstrates that Mr. Malone not just possesses a
13 firearm, but certainly is not afraid to use a firearm to
14 further his own needs and desires, but also uses violence.
10:35:52 15 And unfortunately, we see that on a repeated basis
16 throughout this report.

17 Along with Mr. Malone's use of violence and
18 firearms to further his personal agendas, we also see
19 throughout his criminal history repeated disregard for
10:36:14 20 others, personally as well as their property.

21 Which leads me, Your Honor, to the history and
22 characteristics of the defendant, which further evidences
23 that the statutory max is warranted in this case.

24 When Your Honor looks at the criminal history of
10:36:30 25 Mr. Malone, unfortunately, what is apparent is a consistent

1 and troubling pattern of not just criminal conduct starting
2 at an early age, but unfortunately, violent criminal
3 conduct.

4 Starting as early as age 13, we see five
10:36:47 5 adjudications as a juvenile. At age 15, Mr. Malone was
6 adjudicated delinquent of felonious assault, and there, I
7 believe, is the first time where we see the firearm -- use
8 of a firearm clearly involved in his criminal history. And,
9 of course, from there, unfortunately, the presence of a
10:37:10 10 firearm continues.

11 As an adult, we see all of the convictions that he
12 acquires, starting with the aggravated burglary and
13 attempted. We also then on page 9 of the report, again we
14 see aggravated riot, this time with firearm specifications.
10:37:30 15 Once again, there's a trafficking offense, with not only a
16 firearm specification, but a school yard specification.

17 And as Your Honor can see, a firearm is a part of
18 nearly every single one or a majority of Mr. Malone's
19 offenses. And in many of them, as is evident from the
10:37:52 20 descriptions included in the report, the firearm isn't just
21 present, but is involved in brandishing, and many times --
22 or several times, the firearm is discharged as a part of the
23 offense.

24 In paragraph 33, and I think this one is very
10:38:07 25 important to note, this is not Mr. Malone's first time in

1 federal court, and it's not his first time in federal court
2 for a felon in possession charge.

3 In 2006, he was sentenced to 65 months. I believe
4 that was by Judge O'Malley, if I'm not mistaken. And so he
10:38:26 5 has already had a previous federal sanction for this very
6 same or very similar conduct. He got off supervised release
7 in April 2013. It appears he didn't have too many problems
8 during his period of supervised release with one of Your
9 Honor's former colleagues.

10:38:47 10 But unfortunately, in August of 2013, just shortly
11 within four months or so of him being released from federal
12 supervision is when he picks up an offense -- well, I'm
13 sorry, it's a pending charge. But when he's arrested in
14 Indiana for driving under the influence of a controlled
10:39:05 15 substance.

16 I think this is good evidence, Your Honor, of the
17 defendant's lack of regard for the laws that are put in
18 place by our society, and also indicating that previous
19 sanctions have achieved little to no deterrent effect.

10:39:28 20 Particularly given that he's already been through a
21 significant federal sentence before returning to very
22 similar, and actually even worse once you consider the
23 relevant conduct of the kidnapping, offense conduct.

24 For all these reasons, Your Honor, we would ask
10:39:47 25 that you impose the statutory max. We feel that's necessary

1 to promote respect for the law, to achieve just punishment
2 for this offense, and most importantly, two of the factors
3 under 3553(a), which are deter the defendant, primarily,
4 from engaging in future criminal conduct of this nature,
10:40:06 5 particularly ones involving firearms, and also to protect
6 the public, such as the victim who was involved in the
7 kidnapping here, and any other future people who might be
8 put in harm's way by Mr. Malone's use or possession of
9 firearms.

10:40:23 10 Thank you.

11 THE COURT: Thank you, Ms. Klump. May I ask you a
12 question?

13 MS. KLUMP: Yes, ma'am.

14 THE COURT: The memorandum submitted on behalf of
10:40:31 15 Mr. Malone indicates, and if you have it, you could look at
16 the bottom of page 4, and then Mr. Thompson repeats it
17 without the citation to the guidelines section on page 5.

18 And basically what he does at the bottom of page 4
19 is he introduces a relatively new section of the Guidelines
10:40:54 20 Manual, and that's 5G1.3. And he's kind enough to quote it
21 there for me. And I appreciate that, Mr. Thompson, because
22 it's not been in existence all that long.

23 But basically, he asks that I state that whatever
24 sentence I impose today be served concurrently with an
10:41:16 25 anticipated state sentence. And Mr. Thompson will speak to

1 me about this as well. I have some difficulty with
2 anticipated. The guidelines, unfortunately, doesn't define
3 that.

4 We know that there is the kidnapping with firearms
10:41:34 5 specifications offense pending against Mr. Malone in
6 Cuyahoga County, and it's the offense that's referred to.
7 Generally we talk about another felony offense resulting in
8 the four-level increase.

9 My difficulty with the imposition of a concurrent
10:41:53 10 sentence, because I anticipate a state sentence, is he
11 hasn't pled guilty in state court, he hasn't been tried,
12 he's only been charged. And you and I know that an
13 indictment is proof of nothing.

14 So I'd simply like to hear your position on the
10:42:10 15 imposition of this federal sentence concurrently with an
16 anticipated state sentence pursuant to Section 5G1.3.

17 MS. KLUMP: Thank you, Your Honor. I have some
18 similar confusion as to how this is -- how this particular
19 guideline is to be implemented, given that it would
10:42:35 20 apparently ask the court to impose a sentence concurrent to
21 a sentence that we don't know if it will take place or what
22 it would ever be.

23 Unfortunately, I do read -- it's the government's
24 understanding in this case that this guideline does,
10:42:57 25 however, direct the court to -- or recommends to the court

1 to impose a concurrent sentence.

2 Perhaps if the court, in issuing its judgment, if
3 it found a concurrent sentence appropriate, which the
4 government would not object to, to specify perhaps the
10:43:15 5 particular case, county case in which the case should run
6 concurrent to, as opposed to perhaps -- so there's no
7 confusion in the record or with the Bureau of Prisons, as to
8 perhaps any other pending matter that Mr. Malone might have,
9 as is apparent, for example, in paragraph 45, or maybe other
10:43:38 10 pending charges which are not known at this time.

11 THE COURT: Thank you. I appreciate that.

12 Are you otherwise finished?

13 MS. KLUMP: Yes, Your Honor. Thank you.

14 THE COURT: Mr. Thompson, I am ready for your
10:43:50 15 allocution. And unless you'd prefer to stay there, you are
16 welcome to stay there if you'd like to, I'd invite you to
17 the podium with your client.

18 MR. THOMPSON: Please, Your Honor. Thank you.

19 Come up to the podium.

10:44:17 20 THE COURT: Thank you.

21 MR. THOMPSON: Thank you. May it please the
22 court.

23 THE COURT: Certainly.

24 MR. THOMPSON: I would ask the court to consider,
10:44:23 25 with regard to his history and circumstances, circumstances

1 of his upbringing that I pointed out in his sentencing memo
2 filed with the court, and that are reflected in his
3 presentence report.

4 He does have family here in support of him today,
10:44:41 5 including his mother. I would ask the court to consider
6 both the fact that his childhood was difficult, given that
7 both parents were actively using crack cocaine during most
8 of his young life, as mitigatory.

9 And I would also ask the court to consider the
10:45:07 10 fact that his mother is here, clean and sober for many
11 years, as reason for hope.

12 His father also became clean and sober, but,
13 unfortunately, passed away in June of this year, on June
14 6th.

10:45:26 15 Mr. Malone, in reflecting on where his conduct has
16 brought him and what his life looks like now and what he
17 hopes to make it when he's released, feels the pain of his
18 father's loss especially.

19 He is before the court, having spent previous
10:45:45 20 times in federal and state prison, and is now facing a
21 prison sentence here and in state court that will result in
22 him being released in his upper 30s, if he is very lucky,
23 and most likely higher.

24 The state charges he is facing, and the state
10:46:05 25 sentence that we are anticipating, is likely to be higher

1 than the maximum in this case. I believe they will be, of
2 course, asking the state judge to consider concurrent time
3 and consider a sentence that would not increase his total
4 sentence. However, the kidnapping with a firearm
10:46:26 5 specification carries, I believe, 6 to 13 years of mandatory
6 time. With a repeat violent offender specification, I
7 believe that may make the maximum term mandatory. The
8 felonious assault with a firearm carries an identical term.

9 I would ask this court to consider also that
10:46:51 10 Mr. Malone has given himself, through his hard work, a skill
11 that's going to, you know, enable him to find employment, as
12 he did when he was on supervision for his last felon in
13 possession case. He got a certificate in asbestos removal
14 that he is going to have to renew because it will expire,
10:47:18 15 but he found employment in that field. It's a field that I
16 expect will still be in existence in ten or more years.

17 And I think the fact that he has a -- that he has
18 real employment opportunities is something else that this
19 court can consider as reason for hope in this case.

10:47:46 20 I would ask the court to therefore consider a
21 sentence less than the maximum in this case. I would ask
22 the court to follow the guideline provision directing
23 concurrent time with the anticipated state sentence. Both
24 because the guidelines indicate that it should be done, but
10:48:11 25 I believe that there's good commonsense reason for it also.

1 THE COURT: Let me, before you get to that, the
2 difficulty I have is not -- if there were a sentence
3 pending, then that would be an easy adjustment. I'd simply
4 state "concurrent to the sentence imposed." Or even if
10:48:28 5 there had been a conviction, a plea of guilty. We don't
6 have either of those. We simply have a charge pending.

7 And I don't know if you've had this 5G1.3 applied
8 in a circumstance such as this, where there is not yet an
9 imposed sentence. And how am I to know whether or not to
10:48:48 10 truly anticipate it? Our justice system is alive and well.
11 What if there is an acquittal? Then I would assume right,
12 there would be no concurrent sentence. But it's simply
13 asking me to make a case.

14 I will admit to you, because of the four-level
10:49:06 15 enhancement, this is not as difficult as it could otherwise
16 be. Because I've had to review that, even before the
17 withdrawal of the objection, to decide for myself if there
18 was an appropriate enough nexus, if, by a preponderance of
19 the evidence, I find that there was a firearm used in
10:49:23 20 relation to another felony offense. Therefore, I've been
21 able to satisfy myself that there was some other felony
22 offense. But that still isn't a conviction.

23 MR. THOMPSON: That's understood, Your Honor. And
24 I don't believe that the guideline -- I believe the
10:49:41 25 guideline provision was meant to apply in circumstances like

1 this, and not create, you know, sort of a procedural
2 minefield through which a defendant must walk to afford
3 himself of that provision.

4 Certainly, it is expected, and I want to be
10:50:04 5 careful, because as Your Honor indicates, Mr. Malone hasn't
6 pled guilty in that case, and remains presumed innocent, and
7 plea negotiations are not, it's my understanding, finalized.
8 But I believe I can represent to the court, based on
9 conversations with state counsel, that it is anticipated
10:50:25 10 that that case is going to be resolved.

11 However, I mean, certainly should this court not
12 find that it would apply otherwise, and find that a
13 concurrent sentence would not be appropriate without that
14 provision being applicable, then I would indicate that I'd
10:50:50 15 deeply regret not having that case resolved prior to coming
16 before Your Honor and would ask for an opportunity to do so.

17 But if I could just touch on I believe the
18 commonsense reasons --

19 THE COURT: Certainly.

10:51:04 20 MR. THOMPSON: -- why this court should do so in
21 this case.

22 First, as Your Honor noted, he's already receiving
23 a substantial four-level increase for involvement in that
24 conduct, such that consecutive time would perhaps not be
10:51:17 25 within the letter of the law of double jeopardy or double

1 punishment, certainly would violate the spirit of it.

2 But most importantly I think, what he is being
3 punished for in this case is just possession of the firearm.
4 Although the surrounding circumstances are important and
10:51:36 5 inform this court's decision, I would suggest that this
6 court's role is punishment for possession of the firearm
7 itself.

8 This court is not -- doesn't have the victim, the
9 alleged victim in that case before it, doesn't have a full
10:51:51 10 view of all of the facts and circumstances in that case, nor
11 would it be appropriate to turn this sentencing hearing into
12 a minitrial or a minisentencing of felonious assault and
13 kidnapping. That is really the state court's role.

14 And I would ask the court to, by ordering a
10:52:12 15 sentence to run concurrent with the state sentence, to
16 preserve the state judge's power in that case. The state
17 court judge who sees that -- looks that person in the eye,
18 who has these circumstances fresh before him, should be in
19 the position to control whether or not ten years is enough,
10:52:35 20 or whether consecutive time of some amount is enough, even
21 if it's concurrent but the sentence is higher than ten, so,
22 therefore, it overlaps, or whether a full consecutive
23 sentence is required, which would result in a sentence -- in
24 this case, would result in a sentence near -- in excess of
10:52:56 25 20 years, potentially, far greater than is necessary under

1 the federal sentencing statutes.

2 For those reasons, I would ask the court to
3 consider not only a sentence of less than a minimum, but
4 most importantly, to consider a -- to order a concurrent
10:53:12 5 sentence with the anticipated state sentence in that
6 underlying state case.

7 Thank you.

8 THE COURT: Thank you, Mr. Thompson.

9 MR. THOMPSON: Do you want me to get that paper
10:53:23 10 for you?

11 THE COURT: Thank you again, Mr. Malone. When
12 you're ready, I'm ready, sir.

13 Mr. Thompson, direct upwards that microphone.
14 Thank you.

10:53:44 15 THE DEFENDANT: Your Honor, today I stand in front
16 of you and accept full responsibility for my actions. There
17 isn't one day that passes where I don't feel ashamed about
18 how I let my family down. I understand that life throws
19 challenges your way and it is up to you in order to overcome
10:54:01 20 them.

21 I would like to say to you, as well as my family,
22 that I will not let this situation define me. I am
23 determined to clean myself up, not only for the sake -- for
24 the sake of not only myself, but for my family and my
10:54:17 25 beautiful daughter as well.

1 Despite my shortcomings, my family has been very,
2 very supportive, and have shown that they are willing to
3 help as long as I put forth the effort. I am sure to be in
4 the age of my 30s upon my release, and I can honestly admit
10:54:35 5 that I need to become more responsible and take advantage of
6 my life while I still have the chance.

7 As far as my future plans, when I am released, I
8 will enroll back into college in order to finish and receive
9 my business degree. I also plan on going back to class to
10:54:48 10 renew my asbestos certification so that I can obtain some
11 consistent employment in order to further my success while
12 being able to take care of myself and return the love and
13 support back to my loved ones.

14 Thank you.

10:55:02 15 THE COURT: Thank you, sir. I appreciate that you
16 gave some advance thought to what you'd say, and I know from
17 this sentencing memorandum that Mr. Thompson and you had
18 spoken about your plans, and I am pleased that you have
19 them. That shows hope.

10:55:17 20 I've received these letters that I mentioned to
21 you as a supplement to your sentencing memorandum, and again
22 and again, "Your Honor, Ryan is not a bad person," "Ryan was
23 on the right track." It's repeated over and over again.

24 And what's not explained to me by the letters, and
10:55:43 25 that's understandable, but not even by you, is how in the

1 world did you let this happen again. Not only do you have a
2 dense, serious criminal history, one that reeks of violence,
3 but you've been through federal court. You've served five
4 years. You've even been through Reentry Court. And I have
10:56:08 5 to believe you've stood before judges at various times
6 saying much of the same things you've said today. I've got
7 to believe there's probably no one in the courtroom who
8 hasn't been in a courtroom like this before with you
9 standing before a judge waiting to find out what would
10:56:23 10 happen.

11 THE DEFENDANT: Uh-huh.

12 THE COURT: So I understand what you said. I've
13 heard it. I am having trouble understanding, first, how it
14 is you're back here.

10:56:33 15 THE DEFENDANT: Your Honor, upon reading my
16 letter, I didn't want to stop, I wanted to get the entire
17 letter out before I spoke on how I allowed the situation to
18 happen once again. And like --

19 THE COURT: Well, if you have something to tell
10:56:49 20 me, tell me now. Because the next time I start speaking,
21 you won't have another opportunity.

22 THE DEFENDANT: All right.

23 THE COURT: So if there's anything you'd like to
24 tell me -- because I tell you, quite frankly, what I am
10:57:00 25 trying to decide is when you're going to be ready to

1 interact with society.

2 THE DEFENDANT: Uh-huh.

3 THE COURT: And if you can help me with that, say
4 it now or you'll forever hold your peace.

10:57:13 5 THE DEFENDANT: I will say it now, Your Honor.
6 Upon this situation, the time -- the sentence that you hand
7 down, Your Honor, I will use that time wisely. I have no
8 other choice. I have no other option. I don't want to
9 spend the rest of my life incarcerated. I have a family
10:57:31 10 that loves me. I have a daughter that I love, and I know
11 she loves me. I have to use this time to get myself
12 together. There are no more options at all, Your Honor.

13 And I can honestly say that I made a mistake. You
14 know, things became hard for me. I became depressed and I
10:57:56 15 let myself down. But I will -- I will rebound from this
16 situation, Your Honor.

17 THE COURT: Are you finished?

18 THE DEFENDANT: Yes.

19 THE COURT: Thank you.

10:58:06 20 I have listened to all that's been said. I've
21 reviewed the record, and I am prepared to state the reasons
22 why I will impose the maximum of 120 months, Mr. Malone.

23 I have heard what you've said, and I know the
24 chances you've been given, and I can't accept so little
10:58:26 25 provocation as things got hard. Things are always hard.

1 They will always be hard, and you are going to have to be
2 prepared for that.

3 What you did was a blatant disrespect not only for
4 society and its laws, but for human life. And I accept that
10:58:43 5 you had a difficult upbringing. But you know what you've
6 done now? You've ensured that many possibly, but certainly
7 one person is going to have a difficult upbringing, and
8 that's your daughter. You know, loving her is good. I love
9 her too. But I don't pay her bills and neither do you. And
10:59:01 10 you're not going to start doing that for a real long time.

11 And you have to stop thinking about yourself.
12 It's easy to be depressed, especially when you refuse to
13 change the circumstances surrounding you. And I don't
14 pretend to know what you face daily, but I know some of the
10:59:20 15 tools and chances that you've been given, especially when
16 I'm made to know that you've gone through one of our Reentry
17 Courts. And you blew it. You came out and you did this
18 most horrific thing. You possessed a firearm and ammunition
19 after having been convicted as a felon. There is absolutely
10:59:40 20 no bases for that.

21 THE DEFENDANT: Uh-huh.

22 THE COURT: That's against federal law.

23 Don't speak. I've told you once. Don't part your
24 lips with the anticipation of uttering a sound. Am I clear?

10:59:51 25 THE DEFENDANT: Yes, Your Honor.

1 THE COURT: It's done.

2 For all of the reasons I've stated, having
3 considered the 3553(a) factors, I can only hope that you
4 truly have gotten it. Federal prison is no place to grow
11:00:09 5 up. It's not what it's designed for.

6 I find that the statutory maximum is appropriate
7 for you based upon your past. I find it's appropriate for
8 you because adequately deterring you is what I hope to do.
9 This time you have twice the federal sentence you received
11:00:28 10 the last time. If this doesn't deter you, I can almost
11 guarantee you, you're going to come back an armed career
12 criminal or something worse, you are going to be looking at
13 a 15 mandatory minimum or a life sentence. And you had
14 better consider that before you allow depression or things
11:00:47 15 getting hard to allow you to act in a way that's disruptive
16 to society and violative of our laws.

17 So for all of those reasons, I hereby impose a
18 120-month term of incarceration. Upon your release from
19 prison, sir, you are going to serve, and I know you're well
11:01:07 20 familiar with this, supervision for three years.

21 Within 72 hours after you leave prison, you must
22 report to the nearest probation officer. If you don't, that
23 would be your very first opportunity to violate your
24 three-year term of supervision.

11:01:24 25 And I know that you know this already, but I am

1 going to say it so that it's clear. If you violate
2 supervision, that's a reason for supervision to be revoked
3 and for you to be returned to prison.

4 You understand that, don't you?

11:01:36 5 THE DEFENDANT: Yes.

6 THE COURT: I am not imposing a fine, but I do
7 require that you pay the \$100 special assessment. It's
8 essentially court costs.

9 Restitution is not an issue in this case;
11:01:47 10 therefore, there is none imposed.

11 Sir, I know you know this. You knew it 13 points
12 ago. But I tell you this for the record so there's no
13 further confusion. For the rest of your life, I hope this
14 case, but certainly during this three years while you're on
11:02:04 15 supervision, you shall never again commit a federal, local
16 or state crime. That's no crime. You can't be a little bit
17 law-abiding and partially lawbreaking.

18 So if you leave prison without a valid driver's
19 license, you can't drive. You can't even drive to the
11:02:22 20 bureau to get your license. You can't jaywalk. You can't
21 text while driving. If you're driving, you must buckle up.
22 You can't violate the law. Because if you violate the law
23 while you're on federal supervision, that's a reason to
24 revoke your supervision and return you to prison.

11:02:37 25 I know that you understand that, don't you?

1 THE DEFENDANT: Correct.

2 THE COURT: Sir, you shall never again, ever,
3 possess a firearm, destructive device, dangerous weapon or
4 even a single bullet. You're a felon. And as long as you
11:02:53 5 reside in these United States, that will always be your
6 circumstance.

7 You understand that, don't you?

8 THE DEFENDANT: Yes.

9 THE COURT: If you believe that you cannot live
11:02:59 10 safely in a place without possessing a firearm, destructive
11 device or dangerous weapon or even a bullet, move. Just
12 pick up and go where someone else doesn't know you. What
13 difference does it make? As far as I can see, things
14 weren't going so well for you here. Move to another place.
11:03:21 15 Bus tables. Do what you can. If you don't have your
16 asbestos certificate re-upped by then, work. Honest work is
17 good work. It will keep you out of trouble.

18 Do you understand that?

19 THE DEFENDANT: Yes.

11:03:33 20 THE COURT: And your supervision is not a reason
21 not to relocate, because any right-thinking judge would
22 support you in that, if you make sure that you receive
23 permission from the probation office before changing your
24 address.

11:03:48 25 Do you understand that, sir?

1 THE DEFENDANT: Yes.

2 THE COURT: Sir, I am ordering that you approve
3 in -- that you participate in an approved program of
4 substance abuse testing, that can include outpatient or
11:03:59 5 inpatient substance abuse treatment as directed by your
6 supervising probation officer.

7 This is also going to include random drug testing.
8 You are going to have at least three drug tests. The first
9 will come soon after you're released from prison, within 15
11:04:15 10 days, or it could come sooner, within that
11 72-hours-after-you're-released-from-prison meeting with your
12 probation officer.

13 Never do anything to interfere with the test.
14 Don't misunderstand me. I'm not telling you that you can
11:04:30 15 ever use drugs, illegal drugs or take a prescription drug
16 prescribed for someone else, but I'd much rather you test
17 positive than avoid the test. Meaning don't show up, or
18 show up and pretend you can't make urine, or show up and
19 present someone else's urine as your own. Because those
11:04:48 20 will be reasons for automatic revocation of your
21 supervision.

22 If you're using, that can be dealt with, to some
23 extent, before any revocation circumstances come into play.
24 Does that make sense?

11:05:00 25 THE DEFENDANT: Yes.

1 THE COURT: Sir, your DNA will be collected. When
2 your supervising probation officer asks that you participate
3 in that DNA submission, please abide. All right?

4 THE DEFENDANT: Okay.

11:05:14 5 THE COURT: While you're on this three-year term
6 of supervision, I am going to allow the probation office to
7 search you, without a warrant, if reasonable suspicion
8 suggests that you're in any way in violation of your
9 supervision or in violation of law or in possession of
11:05:26 10 contraband. So the search can be not only of your body,
11 sir, but it can be of the place where you live.

12 Family, the probation officers can come to your
13 homes if you've welcomed Mr. Malone in. Don't interrupt,
14 none of you. That can be an automatic revocation of
11:05:43 15 supervision. If something is found, we'll take it up after
16 it's found.

17 The search can be at a place where you work.
18 Please, while you make sure that anyone with whom you make
19 your home knows that you can be searched, you don't need to
11:05:57 20 do that at work. If it happens at work, it will be done
21 respectively. The results will be taken up once they're
22 known.

23 Make sense?

24 THE DEFENDANT: Yes.

11:06:05 25 THE COURT: The search can happen in any car that

1 you typically drive or are driven in. And it can also be of
2 a computer that you use or have access to, if it's believed
3 that the computer is involved in the reasonable suspicion
4 circumstances.

11:06:20 5 Mr. Thompson, your commonsense approach to
6 imposing the 120-year -- 120-month sentence makes the most
7 sense. While I don't like anticipating a sentence,
8 especially when, as you've pointed out, Mr. Malone is
9 presumed innocent of the kidnapping charges that await him
11:06:41 10 in state court, I will follow 5G1.3 and remark now and
11 restate it in writing when I issue the judgment and
12 commitment order, that the 120-month sentence is to be
13 served concurrently to, and as Ms. Klump stated, the
14 sentence anticipated in the pending case in Cuyahoga County
11:07:05 15 Court of Common Pleas, and that is the case for kidnapping
16 with firearm specifications and repeat offender
17 specification, abduction with firearm specifications,
18 felonious assault and firearm specifications with a repeat
19 offender specification, having weapons while under
11:07:23 20 disability, carrying concealed weapons, possessing criminal
21 tools, receiving stolen property, and all of those are given
22 the single case number of CR-14-591007. And to assist the
23 Bureau of Prisons, that is the charge brought against
24 Mr. Malone that's noted in paragraph 46 of the presentence
11:07:53 25 report.

1 Mr. Wlotzko, what have I missed, sir?

2 PROBATION OFFICER: Nothing, Your Honor.

3 THE COURT: Mr. Thompson?

4 (Discussion held off the record between Mr. Thompson
11:08:02 5 and the Defendant.)

6 MR. THOMPSON: Nothing, Your Honor. Thank you.

7 THE COURT: Did I give you enough time to finish?

8 MR. THOMPSON: Yes. Thank you.

9 THE COURT: I know that you know this, and I am

11:08:11 10 going to state it for the record so that you can start the
11 discussion with Mr. Malone about his appellate rights. You
12 entered a plea of guilty without a plea agreement, so you
13 haven't waived any of your appellate rights.

14 You only have 14 days after I reduce to writing
11:08:23 15 the sentence that I've just imposed to file a notice of
16 appeal. And all that is is a one sentence notice telling
17 the appellate court to set a schedule to allow you to more
18 fully explain the theories that you believe may be viable on
19 appeal.

11:08:40 20 But if you file that notice after the 14 days has
21 expired, you may have forever waived your appellate rights.

22 Do you understand that?

23 THE DEFENDANT: Yes.

24 THE COURT: Mr. Thompson, I don't know if you or
11:08:51 25 Mr. Malone will decide to work together on any appeal that

1 he files, but will you at least file timely the notice of
2 appeal for him should he ask you to do so?

3 MR. THOMPSON: Yes, Your Honor.

4 THE COURT: Mr. Malone, you should not allow the
11:09:04 5 fact that you may not be able to afford counsel to stop you
6 from filing an appeal, because just as Mr. Thompson has been
7 appointed to represent you, the appellate court can assure
8 that you're appointed counsel if you're found to be unable
9 to afford counsel.

11:09:19 10 Do you understand that, sir?

11 THE DEFENDANT: Yes.

12 THE COURT: I am going to start with Ms. Klump and
13 then come back to you, Mr. Thompson.

14 Ms. Klump, tell me, what have I missed?

11:09:31 15 MS. KLUMP: Nothing, Your Honor.

16 THE COURT: Please take a moment now to state any
17 objections you have to any part of the proceedings as to
18 Mr. Malone. And state specifically any objections to the
19 sentence that I've just imposed.

11:09:45 20 MS. KLUMP: No objections, Your Honor. And no
21 objections to the proceedings.

22 THE COURT: Thank you.

23 Mr. Thompson, now is the opportunity for you to
24 state for the record any objection you have to any part of
11:09:55 25 the proceedings. And please separately state any objection

1 to the sentence imposed.

2 MR. THOMPSON: No objection to the proceedings,
3 Your Honor. To preserve his appellate rights, I would note
4 an objection to the maximum sentence, because we did request
11:10:12 5 less than a maximum sentence.

6 Thank you.

7 THE COURT: Certainly. Your objection is noted
8 and overruled for the reasons stated on the record.

9 Mr. Malone, your future is in your hands. I hope
11:10:23 10 you will continue to grow and improve yourself while in
11 prison. Please don't spend your time there developing how,
12 when you leave prison, you can further your criminal
13 conduct, but prepare yourself for life in society without
14 any more lawbreaking.

11:10:39 15 I can almost guarantee you that when you alight
16 from prison this time, if you are in your 30s, that may not
17 happen again. The next time, if you're incarcerated,
18 especially as a result of a federal conviction, you're
19 likely to spend the rest of your life in prison.

11:10:53 20 And I think you know, the federal system and the
21 state system are very different. Life, when issued by a
22 federal judge, is just that, life. There is no such thing
23 as parole. There is no such thing as expungement.

24 And I hope you will do your very, very best to
11:11:09 25 make up for your absence from your daughter's life in every

1 way that you possibly can. I wish you nothing but the best,
2 sir.

3 This hearing is adjourned.

4 THE CLERK: All rise.

11:11:20 5 (Proceedings concluded at 11:11 a.m.)

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C E R T I F I C A T E

I certify that the foregoing is a correct transcript
from the record of proceedings in the above-entitled
matter.

<u>/s/ Mary L. Uphold</u>	<u>July 28, 2015</u>
Mary L. Uphold, RDR, CRR	Date